IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15587 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KARMANBHAI HARIBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15587 of 2003

MR IS SUPEHIA for Petitioner No. 1

MR BHATE, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/09/2004

ORAL JUDGEMENT

1. This petition raises the issue of grant of higher

pay scale under the Government Resolution on the ground that inter-district service and his service which was rendered in previous district or previous service is not taken into consideration for the purpose of granting higher pay scale.

2. The petitioner joined service as a junior clerk on 12.12.1984 and then was transferred on 1.1.1990 to Mahesana District on his request. The petitioner by application dated 7.10.2003 requested for grant of higher grade scale since he completed nine years of service as junior clerk from 12.12.1984. The respondent no.2 by letter dated 22.10.2003 rejected the request of the petitioner on the ground that the service rendered by the petitioner in former district is not to be counted for the purpose of higher grade scale in view of paragraph 3(2) of the Resolution dated 16.8.1994.

3. The respondents have appeared and have contended that the petitioner has been transferred at his own request and joined at Mahesana. As per the resolutions dated 31.3.1994 and 16.8.1994 passed by the Finance Department the seniority of the petitioner is to be considered afresh from the date of joining in Mahesana District and on completion of 9 years of service at Mahesana, the petitioner will be given the benefit of higher pay scale. In view of the resolutions, the petitioner is not entitled to get the higher pay scale from 1.2.1994. The petitioner was earlier working in Kutch District as Junior Clerk and his date of appointment was 12.12.1984. The petitioner has not complied with the provisions of paragraph 3(2) of the Resolution dated 16.8.1994. The petitioner is transferred from another district and the same is inter-district transfer. The service rendered by the petitioner in Kutch District cannot be taken into consideration in Mahesana District, and, therefore he is not entitled to get the benefit of higher pay scale with effect from 1.2.1994 in view of resolution dated 16.8.1994.

4. Mr Supehia, learned advocate for the petitioner, has relied upon the decision of Division Bench of this Court rendered in Letters Patent Appeal No.229 of 2003 dated 5th May, 2003. In para 7 of the said judgment it is observed as under:-

> "7. After having heard the learned advocates appearing for the parties and after examining and evaluating the factual profile of the entire matter and also after having considered the

> authorities cited before us, we are of the view that the order passed by the learned single Judge, requires an interference by us while exercising appellate jurisdiction under clause 15 of the Letters Patent. The Hon'ble Supreme Court has, in the case of Dwejen Chandra Sarkar (supra) specifically held "that the past service of the appellants is to be reckoned for the limited purpose of eligibility computing the number of qualifying service, to enable them to claim the higher grade under the scheme of time bound promotions." The Hon'ble Supreme Court has further held that the appellants will be entitled to the higher grade from the date on which they have completed 16 years service in the Rehabilitation Department also along with the service in the P.&T. Department. They will be so entitled as long as they remained in the post of Assistant and till their normal promotion to a higher post according to Rules. Even the Division Bench of this Court in the case of State of Gujarat vs. Ajitsinh Chaturji Rathod, L.P.A. No.779 of 2000, decided on 4.12.2000 taken the view that "mere transfer from Surat to Mehsana on the condition to be at the bottom, at the new station, upon request, would not, in any way, adversely affect the right to claim benefit of higher grade under the relevant G.R." In our view, the learned single Judge is, therefore, not right in holding that for conferring of benefit of higher grade scale on completion of 9 years' service, the service rendered in Mehsana District Panchayat alone can be considered. This view is contrary to the view taken by the Hon'ble Supreme Court, in the case of Dwijen Chandra Sarkar (supra), and the Division Bench judgment of this court in the case of State of Gujarat vs. Ajitsinh Chaturji Rathod (supra)."

In this view of the matter, Mr Supehia submitted that the contentions raised by the respondents is misconceived and the petitioner is entitled for higher pay scale.

5. In view of the observations made by this Court in Special Civil Application No.10469 of 1999, dated 12th September, 2002, and judgment of Division Bench in Letters Patent Appeal No.779 of 2000, the petitioner is entitled for higher pay scale when he has completed 9 years of service including earlier service which he performed in the earlier post.

6. In the result, the petition is allowed. The order dated 22.10.2003 passed by respondent no.2 is set aside. The respondent no.2 is directed to approve the order/letter of respondent no.1 and grant higher pay scale to the petitioner and make necessary payment within a period of 2 months from the date of receipt of this order.

7. Rule is made absolute accordingly with no order as to costs.

(K.S.Jhaveri, J.)

(pathan)